



601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | **PHONE:** 202-638-5777 | **FAX:** 202-638-7734

VIA E-MAIL: regs.comments@federalreserve.gov

August 20, 2009

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System

20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1364 – Interim Final Rule on Implementation of the CARD
Act

Dear Ms. Johnson:

This letter is the first of two comment letters that the Credit Union National Association (CUNA) will be filing regarding the Federal Reserve Board's (Board's) Interim Final Rule on implementation of the Credit Accountability, Responsibility and Disclosure (CARD) Act. It addresses the provisions in the rule that require creditors to adopt reasonable policies and procedures to ensure periodic statements for any open-end consumer credit account are mailed or delivered at least 21 days before the payment is due in order for the creditor to treat the payment as late for any purpose if it is made after the 21-day period. While most of this letter focuses on the application of the 21-day rule to open-end plans other than credit cards, we are seeking important clarifications on three issues, beginning on page five, that apply to all accounts covered by the 21-day rule. By way of background, CUNA is the largest credit union advocacy organization in this country, representing approximately 90% of our nation's 8,000 state and federal credit unions, which serve 92 million members.

CUNA will be filing a second comment letter before the September 21 comment period deadline on the 45-day change-in-terms notice requirements under the Interim Final Rule.



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Summary of CUNA's Comments

- Credit unions remain extremely concerned about the overwhelming difficulties they are experiencing in trying to meet the August 20, 2009 effective date of the 21-day rule as it applies to open-end credit other than credit cards.
- CUNA has urged the Board to provide reasonable relief to credit unions by either limiting the scope of the 21-day rule to credit cards or extending the compliance date of the 21-day rule except for credit cards. The Board has declined to provide this kind of relief, based on “clear and unambiguous statutory requirements.”
- CUNA is working diligently with key congressional offices to achieve an amendment that will narrow the reach of the 21-day rule or extend the compliance date.
- Meanwhile, in the interim rule, the Board allows, for a “short period of time,” the option of placing language on or with the statement indicating that the consumer has 21 days to make the payment, even if the due date reflected on the statement does not meet the new 21-day requirement.
- A reasonable interpretation of the phrase “short period of time” is the time necessary for credit unions to make needed changes to be in compliance. This interpretation assumes the credit union makes a good faith effort to comply as soon as reasonably possible, and recognizes that this time period may differ among credit unions. While it would be very useful for the Board to clarify this interpretation is reasonable, at a minimum, we urge the Board not to take action that will undermine this interpretation.
- The CARD Act and interim final rule prohibit a creditor from treating a payment as late for any purpose if it does not comply with the 21-day requirement. The rule indicates that this includes imposing a late payment fee, an increase in the annual percentage rate (APR), or reporting the late payment to a credit bureau. We urge the Board to clarify that this would not include other actions that are not punitive, such as routine collection activities, which may actually benefit consumers in that they will be notified of the need to make payments before additional finance charges are imposed.
- The Board should clarify how to comply with the 21-day requirement when periodic statements are delivered electronically. This should not, however, include a requirement to send a separate email to consumers, an approach that the Board elected not to require when it issued its electronic disclosure rules in 2007.
- The 21-day requirement should not apply to very short-term loans in which payment is expected within one periodic statement cycle.

Discussion

CUNA supports the stated intent of the CARD Act, which is to eliminate predatory credit card practices. Although it will require significant adjustments to ensure that credit card periodic statements are mailed at least 21 days in advance of the due date, credit unions are diligently working with their data processors in an effort to make these changes prior to the August 20, 2009 effective date.

However, it does not appear that lawmakers engaged in meaningful deliberations regarding the impact of extending the 21-day rule to all open-end lending programs. As we have stated in numerous discussions with and letters to Board officials since enactment of the CARD Act, the operational hurdles credit unions must overcome regarding the implementation of the 21-day rule for open-end plans other than credit cards are extremely problematic and in some cases, virtually insurmountable, especially given the very abbreviated amount of time they have had to prepare for compliance. For many credit unions, these problems are further complicated by their reliance on processors that are also struggling to help address the numerous processing issues that the application of the 21-day rule to all open-end plans has created. (For reference, those letters are attached.)

In light of these formidable obstacles, CUNA urged the Board to do what it has done in the past to facilitate compliance with Truth-in-Lending Act (TILA) requirements – invoke its authority under Section 105 of TILA to limit the scope of the requirements or provide more time to comply.

Regrettably, the Board has declined to take such action on this occasion, even though a considerable record has been established that details the severe disruptions the 21-day rule will have on the operations of many credit unions and the confusion it will cause for their members, many of whom have chosen their own payment due dates to fit their income patterns and budgets. The record provided to the Board is based on comments from Members of Congress, the National Credit Union Administration, consumer advocates, credit unions, credit union leagues, and others. We continue to strongly disagree that the Board does not have sufficient authority under TILA to help credit unions deal with their compliance difficulties in the manner we have requested.

Meanwhile, CUNA is working diligently with key congressional offices to achieve an amendment that will narrow the reach of the 21-day rule or extend the compliance date.

In light of the very significant compliance difficulties and costs credit unions are facing in trying to meet the August 20 compliance date, the Supplementary Information to the Interim Final Rule did provide a mechanism that some credit

unions have informed us will facilitate their technical compliance with the 21-day rule. As the Board's letter to CUNA states:

[T]he Board understands the difficulties that the 21-day requirements present for credit unions. In the interim final rule, the Board acknowledged that the due dates on periodic statements for open-end plans other than credit cards may be technically inconsistent with the 21-day requirement for a period of time after August 20. The Board stated that during this period, a credit union could remedy the inconsistency by prominently disclosing elsewhere on or with the statement that the consumer's payment will not be treated as late for any purpose if received within 21 days after the date was mailed or delivered.

There are difficulties with this approach, such as for credit unions that use automated processes that impose late fees, report the payment as late, and take collection actions, much of which has to be changed and in some cases, manually overridden. Also, the Board has declined to provide more definitive guidance as to what it is meant by "short period of time."

However, as confirmed by Board legal staff, the use of the approach outlined in the Supplementary Information to the Interim Final Rule will allow a credit union to be in technical compliance with the rule and thus, be able to treat a payment as late if it is received after the 21-day period.

While the Board has not provided an indication as to what period of time would be considered "short" for purposes of this temporary alternative, we believe this phrase can reasonably be interpreted as the amount of time it takes for a credit union to be in compliance with the provisions of the rule, as long as the credit union is proceeding in good faith to meet its obligations within a reasonable amount of time. This time period will likely vary among credit unions and depending on the institution, could be up to three or six months, or even a somewhat longer period of time depending on the circumstances at the credit union.

Credit unions are very concerned that the amount of time it will take them to comply with these provisions beyond August 20th may subject them to legal challenges or enforcement actions. We urge the Board to clarify that this is an acceptable interpretation, which will help address those concerns. However, in any event, we urge the Board to refrain from any action that would undermine this reasonable interpretation.

Other Implementation Issues with Regard to the 21-day CARD Act Requirements

I. Actions that are Considered Treating Payments as “Late”

Under the CARD Act, the payment cannot be considered late for any purpose if the 21-day requirements are not satisfied. The official staff commentary to the interim final rule indicates that treating a payment as late includes increasing the APR as a penalty and reporting the consumer as delinquent to a credit bureau, in addition to imposing a late fee. However, imposing a finance charge in connection with a periodic interest rate will be acceptable for those accounts that do not have a grace period.

The Board needs to provide additional guidance in this area. Specifically, credit unions are very concerned that the list of examples of what is considered late is not an inclusive list and that it may include other activities, especially in the area of collections.

We believe that routine collection efforts should not be considered as “treating a payment as late” in violation of the interim final rule. Although a non-inclusive list is helpful, we also believe the distinction as to whether a payment is treated as late for purposes of the interim rule should be based on whether the action is punitive. If it is, such as imposing a fee, increasing the APR, or reporting the activity to a credit bureau, then we agree that such actions should be prohibited under the final rule.

However, we believe other actions that are not punitive should be permitted. This would include routine, permissible collection actions, such as sending written notification or placing a phone call to the member to notify him or her of the late payment and to arrange for payment, as well as freezing the line of credit or withdrawing the funds from other accounts if that is otherwise permitted. We believe these collection actions may actually benefit the member as this will enforce upon him or her the need to make payments as soon as possible in order to minimize additional finance charges.

Therefore, the Board should clarify that any otherwise permissible legal action to collect the underlying debt would not be in violation of the final rule. Otherwise, consumers would essentially be able to avoid making any payments on the underlying debt, a result that surely was not intended by the drafters of the CARD Act.

Regardless of how these provisions are interpreted, ensuring that payments are not treated as late will entail significant operational burdens and problems, separate from the burdens of providing the periodic statements at least 21 days

before payments are due. Assessing late payments and reporting late payments to credit bureaus are often automated processes that will have to be manually changed, which will be expensive and time consuming, whether it is done by the credit union or the data processor. Terminating the reporting of payments to credit bureaus may also harm consumers as this may terminate the reporting of timely payments that are made between the August 20th effective date and the date the credit union is capable of providing the statements in accordance with the 21-day requirements.

Also, certain collection efforts may be automated, such as generating collection letters to members or withdrawing money from other accounts. These would pose similar compliance challenges if the Board determines that these actions are not permissible if the 21-day requirements are not met.

II. Clarification of the 21-day Requirement for Electronic Disclosures

Under the CARD Act and the interim final rule, the 21-day period will apply even if statements are delivered and payments are made electronically. We request that the Board clarify how to comply with the 21-day requirement when statements are delivered electronically. Specifically, the issue is whether posting the periodic statement on the financial website at least 21 days before the payment is due is sufficient for those who choose to receive the information in this manner.

The Board issued final rules in 2007 that addressed providing electronic disclosures under Regulation Z and the other consumer protection rules that the Board administers. The final rules deleted certain provisions regarding electronic communications that were included in the 2001 interim final rules. These included the requirement to send disclosures to a consumer's email address, or post the disclosures on a website and then send a notice alerting the consumer that the disclosures have been posted.

CUNA strongly opposed this requirement as it would have involved significant compliance and recordkeeping burdens and were pleased that it was deleted in the final rules. In light of the 2007 final rules, we believe the Board should clarify that the final rule does not require that a separate email be sent to notify the consumer that the statement has been posted on the website.

III. The 21-day Requirement Should Exclude Certain Very Short-term Loans

A number of credit unions offer their members short-term open-end lending products. An example is the StretchPay Program in which the participating credit union will make a loan of up to \$500. Only one such loan is permitted at any one time and the loan must be paid within thirty days. Therefore, there is only one

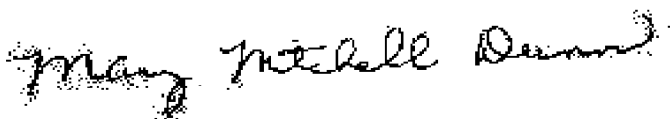
billing cycle when a loan is paid under these types of programs and the balance at the end of the cycle would be \$0, unless the borrower defaults.

The issue here is whether a periodic statement would need to be delivered 21 days before the payment is due, which means the statement would need to be sent within a very short time after the loan is initially made. We believe it should be unnecessary to require such a statement within this timeframe and request that the Board recognize that the 21-day requirement should not apply in these situations.

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In closing, with all due respect, CUNA continues to maintain that the Board has the authority under TILA to limit the scope of the 21-day rule or provide more time for compliance, as CUNA has requested. In any event, CUNA appreciates the Board’s consideration of credit unions’ concerns and the discussion in the Supplementary Information of the Interim Final Rule that provides a mechanism for credit unions that are in technical nonconformance with the 21-day rule to remedy compliance deficiencies. We urge the Board to support a fair and reasonable interpretation of how long credit unions may rely on this compliance alternative, while credit unions do all they can to come into full compliance in a reasonable amount of time. If you have questions about our comments, please contact me or CUNA Senior Assistant General Counsel Jeffrey Bloch.

Sincerely,



Mary Mitchell Dunn
CUNA Senior Vice President and
Deputy General Counsel